

1 it as D0 before.

2 JUDGE SIPPEL: I heard you say
3 that.

4 THE WITNESS: Yes, I apologize it.

5 JUDGE SIPPEL: So that's the most
6 basic, is that right?

7 THE WITNESS: Yes, there's a
8 broadcast basic level of service above that,
9 but that's the tier that has the broadcasters
10 on it. The digital starter level of service
11 has the most commonly thought of cable
12 channels like ESPN and CNN.

13 JUDGE SIPPEL: I hear you. Can
14 you tell me -- it's better for me to
15 understand. Can you tell me what the
16 subscriber, what the number of subscribers
17 were in and around May of 2009 for Option --
18 the first one was Option B. How many
19 subscribers are we talking about there?

20 THE WITNESS: You're going about
21 move to DS?

22 JUDGE SIPPEL: Yes.

1 THE WITNESS: If you'll see, this
2 is a little difficult to read, but digital
3 starter in 2010 had [REDACTED] subs.

4 JUDGE SIPPEL: I can see. That's
5 what we're talking about then. Thank you.

6 THE WITNESS: Yes, now that
7 increased. We actually increased that more
8 significantly than this. It's about [REDACTED]
9 [REDACTED] now.

10 JUDGE SIPPEL: But that's not the
11 point. The point is what was it at that time
12 for purposes of this discussion.

13 THE WITNESS: In '09?

14 JUDGE SIPPEL: That's when you had
15 all these meetings and everything.

16 THE WITNESS: But over the -- this
17 was plotting it out over the term of the
18 contract.

19 JUDGE SIPPEL: I don't have any
20 objection to that.

21 THE WITNESS: Okay, it was the
22 [REDACTED].

1 JUDGE SIPPEL: I'm sorry, let me
2 back up when I say that. You have the actual
3 numbers. In May of 2009, you had the actual
4 numbers that were at least in 2009. Two ten
5 eleven, etcetera, those were all projections?

6 THE WITNESS: Exactly.

7 JUDGE SIPPEL: But that was what
8 was presented to Mr. Solomon?

9 THE WITNESS: No, this was our
10 internal analysis.

11 JUDGE SIPPEL: They didn't know
12 about this.

13 THE WITNESS: But the math is
14 pretty simple. I'm sure he had projections of
15 his own that looked similar.

16 JUDGE SIPPEL: Okay. Okay.
17 That's all right. Go ahead, Mr. Carroll,
18 please.

19 MR. CARROLL: Thank you, Your
20 Honor.

21 BY MR. CARROLL:

22 Q And then if we look over to the

1 far right hand column of Exhibit 588, sir.
2 There are some dollar calculations there, can
3 you just explain to His Honor what those
4 represent?

5 A Yes, this basically summed the
6 total license fees that would be paid under
7 the three options. Option 1 being that --
8 there are three cases. Option 1 being the
9 current contract.

10 Q Correct.

11 A So under that option we would have
12 paid [REDACTED]. Under Option A, the move
13 to D1 or digital basic, that would have been
14 [REDACTED]. So about [REDACTED] more.

15 JUDGE SIPPEL: Do we need to close
16 the --

17 MR. PHILLIPS: As long as we
18 retain the right to redact this.

19 MR. CARROLL: I think we're okay,
20 Your Honor. I appreciate the question, but I
21 think we're okay.

22 JUDGE SIPPEL: I have an eagle eye

1 staff.

2 MR. PHILLIPS: I think the only
3 nonprotective order person here is Marc Fein.

4 JUDGE SIPPEL: Okay, now I've lost
5 a little bit of what's going on here. We went
6 back up to current contract, is that right?

7 THE WITNESS: Yes.

8 JUDGE SIPPEL: And you came up
9 with a number on the licensing fees and I'm
10 trying to see where you got that number.

11 THE WITNESS: If you can see what
12 we did there was we assumed that the
13 distribution on The Tennis Channel would stay
14 as contemplated in the current contract.

15 JUDGE SIPPEL: Yes.

16 THE WITNESS: And there would be
17 no increase in distribution. So we assumed
18 that that stayed the same through [REDACTED]. And
19 we took the rates right out of the contract
20 and it was a simple math exercise, rate times
21 the number of subscribers.

22 JUDGE SIPPEL: Correct.

1 THE WITNESS: Equals an annual
2 number and that's on the bottom line.

3 JUDGE SIPPEL: [REDACTED].

4 THE WITNESS: Yes, over [REDACTED].
5 About [REDACTED] a year over [REDACTED].

6 JUDGE SIPPEL: Okay.

7 BY MR. CARROLL:

8 Q How about the next level, Option
9 A?

10 A Option A was the move to D1 option
11 and that was [REDACTED]. So what this was
12 saying is that if we did the deal that he was
13 presenting, the license fees that we would pay
14 to Tennis Channel would increase by about [REDACTED]
15 [REDACTED] over [REDACTED] years. So we would have to
16 spend an incremental [REDACTED].

17 JUDGE SIPPEL: Is that at the tail
18 end of this chart, the [REDACTED] --

19 THE WITNESS: Yes, you see the
20 [REDACTED]?

21 JUDGE SIPPEL: I do.

22 THE WITNESS: So I'm just

1 subtracting [REDACTED] from [REDACTED]. That's how
2 I get the [REDACTED].

3 BY MR. CARROLL:

4 Q The [REDACTED] representing?

5 A The difference between the two.

6 Q And the last, Option B?

7 A That is the total of [REDACTED].

8 So a total of about [REDACTED] over our
9 existing contract.

10 JUDGE SIPPEL: Go ahead.

11 THE WITNESS: So another way to
12 look at this is if we did nothing, we would
13 probably pay about [REDACTED] to The Tennis
14 Channel over [REDACTED] years. If we elected Option
15 A, we would now spend [REDACTED], so we
16 increased our costs by over -- by about [REDACTED]
17 [REDACTED] and then in Option B, our costs would
18 have increased to [REDACTED], an increase of
19 over [REDACTED] over that same [REDACTED]
20 period.

21 JUDGE SIPPEL: Those numbers like

22 [REDACTED], that does not take into account

1 subtracting the [REDACTED].

2 THE WITNESS: You're exactly
3 right. But obviously for comparison purposes,
4 the significance of these numbers come through
5 clear. Okay. I got you.

6 BY MR. CARROLL:

7 Q So what did you do after you got
8 this analysis from Ms. Gaiski?

9 A So after receiving the analysis
10 and hearing her report of the field
11 conversation --

12 Q Field conversation?

13 A The field conversation of Ms.
14 Gaiski had with respect to the incremental
15 distribution of The Tennis Channel.

16 Q You're referring to the
17 conversations you mentioned a moment ago with
18 the division level?

19 A Yes.

20 Q Between Ms. Gaiski and the
21 division level?

22 A Yes.

1 Q Okay. After you get those two
2 pieces of information, do you reach any
3 conclusion?

4 A Well, I reach a conclusion that
5 this deal really -- there's no offsetting
6 benefit for Comcast in this deal.

7 Q Why is that?

8 A Because we have access to the
9 content. It's on the sports tier. We have
10 revenue associated with it. So we have a
11 contract that allows us to carry it a certain
12 way on a certain set of terms and associate
13 revenue with the carriage of the network. By
14 doing this, it would either one of these
15 options would have removed it from the sports
16 tier and it now would put it in a broad-based
17 package where we would get no incremental
18 benefit and all that would happen is we would
19 dramatically increase our costs to either the
20 [REDACTED] or the [REDACTED]. Those are just projections,
21 but it would be a very significant cost
22 increase.

1 So it was very clear to me that
2 these options were not in Comcast's interest.
3 It would certainly be in Tennis Channel's
4 interest because it would dramatically
5 increase their distribution and the license
6 fees that we paid them, but it would reduce,
7 the costs would come out of our pockets. The
8 money would just come out of our pockets and
9 there was not an offsetting benefit.

10 Q And did you consider whether you
11 might get increased customers? You might
12 increase subscribers by increasing the
13 distribution?

14 A Well, I considered it, but as we
15 discussed earlier, there's no indication that
16 adding Tennis Channel to one of these tiers is
17 going to increase our subscribers to the tier.
18 We got no feedback competitively that
19 suggested that was an issue and based on my
20 experience in the industry, I feel very
21 comfortable that adding Tennis Channel to
22 either one of these levels of services would

1 have not increased the number of subscribers
2 to those tiers one bit.

3 Q And what about ad avails. There's
4 been some discussion earlier this week about
5 ad something about -- called ad avails. Did
6 you -- wouldn't you benefit in the form of
7 additional ad avails under this proposal?

8 A In our agreement with Tennis
9 Channel [REDACTED]
10 [REDACTED] on The Tennis Channel.

11 Q Your existing agreement?

12 A Our existing agreement. So that
13 was not proposed to be changed by this.
14 However, if you increased the distribution of
15 The Tennis Channel to more subscribers, there
16 would be more potential impressions. However,
17 the way that advertising business works, we
18 have advertising avails on all the channels we
19 carry and we only insert on a portion of them.
20 We have a huge inventory of advertising and
21 increasing the ad impressions by some degree
22 on Tennis Channel is not going to increase our

1 advertising, certainly not to offset these
2 numbers in any way.

3 Q And with respect to the analysis
4 you've just taken us through, was there any
5 consideration you gave to Golf Channel or
6 Versus in any of this analysis?

7 A No.

8 Q Did it factor into your thinking
9 at all?

10 A No, this was a straight up
11 financial analysis.

12 Q How about the fact that you didn't
13 own Tennis Channel? Did that factor into your
14 analysis --

15 JUDGE SIPPEL: These are leading
16 questions. I'm going to disregard the answer
17 with respect to the other -- Versus.

18 MR. PHILLIPS: Thank you, Your
19 Honor.

20 BY MR. CARROLL:

21 Q After you did your analysis and
22 reached your conclusion, what did you do next?

1 A We then had a conversation with
2 Ken. We scheduled a call with --

3 Q I'm sorry, Ken?

4 A Ken Solomon. We scheduled a call
5 with Ken Solomon and his team.

6 Q When was that?

7 A That was on June 9th.

8 Q And what happened?

9 A I went through the analysis. I
10 told them that it didn't work for us, that it
11 was dramatically increased costs without a lot
12 of offsetting, without any offsetting benefit
13 and that we weren't interested in the proposal
14 then. And I think in subsequent conversations
15 I had told him that despite that, I wanted to
16 work with him and get personally involved to
17 potentially find some increased distribution
18 of Tennis Channel in other markets. If I
19 could find markets that were marginal cases
20 for launch that maybe would be more interested
21 than others in launching, but still weren't
22 interested in launching, I could get

1 personally involved and increase their
2 distribution, find him some extra subs. But
3 he rejected that. He was not interested. He
4 said it was a waste of time. He told me not
5 to respond with half measures and he really
6 brushed aside any effort to work together on
7 this.

8 Q The phrase "waste of time", you
9 remember him using that?

10 A Yes.

11 Q How about the other phrase he
12 used?

13 A Yes.

14 Q What was that phrase, "half
15 measures"?

16 A "Don't respond with half
17 measures."

18 Q So how does the phone call end?

19 A It didn't end well, obviously. I
20 didn't give him what he wanted and it was a
21 negative call.

22 Q And did you hear anything back

1 from Tennis Channel after that?

2 A No. I was upset about it. I
3 wanted to try to work something out and I knew
4 we were going to have a long standing
5 relationship with him. Frankly, I assumed
6 based on the letter we got in April that we
7 were going to end up in litigation with them.

8 Q Let me ask a question. Did you
9 hear -- after the final conversation you've
10 relayed, did you hear back from Tennis Channel
11 in the weeks that followed?

12 A No. They then over the summer,
13 they got involved in a dispute with
14 Cablevision over the carriage of The Tennis
15 Channel. Cablevision was seeking to launch it
16 on the sports tier because of some U.S. Open
17 convent that The Tennis Channel had. Tennis
18 Channel was resisting that and not offering
19 them the rights to launch it on the sports
20 tier. Ultimately, Cablevision, my
21 understanding is Cablevision opted in to an
22 NCTC deal and did launch it on the sports

1 tier.

2 JUDGE SIPPEL: Tell me -- NCTC,
3 does that have to do with tennis?

4 THE WITNESS: I'm sorry, I
5 apologize. NCTC is a buying group. So NCTC
6 has a number of members and NCTC has
7 agreements with cable networks and then
8 members of the NCTC can carry those cable
9 networks pursuant to that agreement. So
10 they're like a co-op. Co-op is a way to think
11 of them. They're a buying co-op.

12 JUDGE SIPPEL: An umbrella?

13 THE WITNESS: An umbrella buy --

14 JUDGE SIPPEL: Contact that they
15 had. The others can buy into it if they want.

16 THE WITNESS: Precisely. And
17 Cablevision became a member of NCTC and opted
18 into that agreement and they launched Tennis
19 Channel on the sports tier.

20 BY MR. CARROLL:

21 Q And when was that?

22 A That would have been in the

1 summer.

2 Q Of?

3 A 2009.

4 Q So shortly after your -- the
5 communication you've already described with
6 Mr. Solomon?

7 A Yes.

8 Q And then did you hear after that
9 episode with Cablevision, did you hear back
10 from Tennis Channel?

11 A Ultimately, they sent us a letter
12 in December demanding and notifying us of
13 arbitration and they demanded distribution in
14 excess of the last offer they had made and
15 then we were in this process.

16 Q I'm sorry, you said "in excess of
17 the last offer they had made," what are you
18 referring to?

19 A The letter essentially said that
20 they needed a -- they needed some kind of
21 distribution of tennis that would have been
22 even beyond the proposal that they made in

1 May.

2 Q The proposal in May?

3 A Yes.

4 JUDGE SIPPEL: Is that a letter we
5 have? Is that an additional letter?

6 MR. PHILLIPS: It is in evidence,
7 Your Honor.

8 JUDGE SIPPEL: I'm sure it is.

9 MR. CARROLL: May I?

10 JUDGE SIPPEL: Please.

11 MR. CARROLL: This is Comcast
12 Exhibit 251.

13 JUDGE SIPPEL: Thank you.

14 MR. CARROLL: Thank you, Your
15 Honor.

16 JUDGE SIPPEL: And this was
17 already in evidence. A letter to Mr. Burke
18 from Mr. Solomon.

19 BY MR. CARROLL:

20 Q Mr. Bond, do you have Exhibit 251
21 in front of you? Can you identify this?

22 A Yes, this is the December 10th

1 letter.

2 JUDGE SIPPEL: December 2009, yes,
3 I can see.

4 BY MR. CARROLL:

5 Q Is this the letter you were just
6 referring to?

7 A Yes.

8 JUDGE SIPPEL: Is there anything,
9 Mr. Phillips, in this letter that is a concern
10 to you that the witness sees it?

11 MR. PHILLIPS: No, Your Honor. In
12 fact, it was sent from my client to Mr. Bond's
13 boss at the time.

14 JUDGE SIPPEL: Right.

15 MR. PHILLIPS: I'm sure Mr. Bond
16 saw it.

17 THE WITNESS: I'm ready if you're
18 waiting for --

19 BY MR. CARROLL:

20 Q If you turn to page two of Exhibit
21 251?

22 A Yes, sir.

1 Q Do you see there's a paragraph
2 that starts "Our negotiations"?

3 A Yes.

4 Q And you see there's a description
5 in there and a reference to "Matt"?

6 A Yes.

7 Q Do you see that?

8 A Yes.

9 Q Is that you that's being referred
10 to there?

11 A Yes.

12 Q It says "Matt rejected our
13 proposal out of hand without even a counter
14 offer or an explanation making the pretextual
15 nature of the incentive request particularly
16 obvious." Do you see that, sir?

17 A I do.

18 Q What was your reaction when you
19 saw that in this letter?

20 A Well, I felt it was completely
21 false. I didn't reject the proposal out of
22 hand. We considered it. We analyzed it. I

1 explained why it didn't work for us. And I
2 told him that I was willing to try to find
3 some incremental distribution.

4 Q Then the next paragraph looks like
5 the lawyers are involved. Is this what you
6 were referring to by the start of litigation?

7 A Yes. And then it's -- I'm sorry.

8 Q And I take it there was no follow-
9 up discussion you had after you got a copy of
10 this letter between yourself and Mr. Solomon
11 prior to this litigation being filed and
12 moving forward. Is that correct?

13 A Correct.

14 JUDGE SIPPEL: Excuse me, Mr.
15 Solomon even directed a copy to Mr. Weiswasser
16 at Covington. I guess that's an indication of
17 how serious it is to him.

18 MR. CARROLL: Yes.

19 BY MR. CARROLL:

20 Q So I had one other subject I
21 wanted to cover with you, sir, just briefly,
22 because there's been a lot of evidence about

1 it already. I wanted to very quickly discuss
2 with you a subject and that's the professional
3 sports leagues, the MBA, the NHL -- which one
4 am I forgetting, and MLB.

5 JUDGE SIPPEL: NFL?

6 MR. CARROLL: NFL was another
7 matter.

8 JUDGE SIPPEL: So we've got
9 basketball, hockey and baseball?

10 MR. CARROLL: Yes. It's the end
11 of a long week and I struggled with figuring
12 that out this morning.

13 BY MR. CARROLL:

14 Q So I want to cover these very
15 quickly because there's been testimony and
16 evidence about agreements between Comcast and
17 these three networks and I just want to ask
18 you first were you personally involved in the
19 negotiations of each of those agreements?

20 A Yes.

21 Q And what was your role with
22 respect to those negotiations for MLB, NBA,

1 and NHL, for those networks?

2 A I was the head of content
3 acquisition for Comcast, so I was in charge of
4 the department that did those deals.

5 Q Did you personally participate in
6 the negotiations and do you have firsthand
7 knowledge of what happened in the
8 negotiations?

9 A I do.

10 Q Okay. So very quickly, I want to
11 do each one. Do you care which one we do
12 first?

13 A Baseball.

14 Q Baseball. Major League Baseball,
15 you reached an agreement in what year?

16 A In '06. Major League Baseball,
17 very interesting situation. We had a deal
18 with Major League Baseball for the carriage of
19 an out-of-market sports package called Extra
20 Innings. That's basically baseball's version
21 of Sunday Ticket. So unlike Sunday Ticket
22 that wasn't exclusive. So we were carrying

1 that other -- cable operators were carrying
2 that, DirecTV and EchoStar were carrying it.

3 Q Carrying it when?

4 A This really started back probably
5 beginning in around 2000. We had been
6 carrying it for some period of time.

7 Q And was that part of the
8 particular channel? How were you carrying it?

9 A We carried that on an a la carte
10 basis and we sold that on an a la carte basis
11 to subscribers.

12 Q A la carte, I think --

13 A Meaning we sold it as a
14 subscription. You had to pay about \$150 to
15 buy it.

16 JUDGE SIPPEL: That one is in the
17 glossary.

18 (Laughter.)

19 BY MR. CARROLL:

20 Q So what happened with -- run us
21 through this story quickly?

22 A So Baseball approached us and they

1 said guess what, we've done an exclusive deal
2 with DirecTV, so we're going to take Extra
3 Innings away from you.

4 Q When was that?

5 JUDGE SIPPEL: 2006 was what I
6 heard.

7 THE WITNESS: Yes.

8 BY MR. CARROLL:

9 Q Let's clear up the record. When
10 did Baseball approach you and tell you they'd
11 done an exclusive deal with DirecTV and we're
12 going to take it away from you?

13 A This was in '06. I may have the
14 dates, I may have the years off. I think it
15 was '06.

16 Q Okay.

17 A So we then objected to that and
18 said we didn't want to lose Extra Innings. We
19 didn't think it was fair. Their decision to
20 go exclusive created a political issue. There
21 were hearings in Washington about it. They
22 had to go down there and testify. It became

1 a big issue and they backed off.

2 JUDGE SIPPEL: Who is they?

3 THE WITNESS: Baseball.

4 JUDGE SIPPEL: Baseball backed
5 off?

6 THE WITNESS: Backed off on the
7 exclusive deal and they then approached us,
8 Comcast, and the other distributors and they
9 said we're going to give you a one-time,
10 basically a one-time only offer. We'll do the
11 same deal that we did with DirecTV. And that
12 deal meant you got to continue to carry Extra
13 Innings. You had to launch a service that
14 they were going to create called The Baseball
15 Channel. You had to launch that on D1. And
16 you had to pay guarantees on Extra Innings.
17 And there was an equity interest that they had
18 given to DirecTV and they were willing to give
19 Comcast a similar equity interest based on
20 size.

21 BY MR. CARROLL:

22 Q Had you asked them for equity